

**REMARKS**

Claims 1-3, 5-14, 16-18, 21-27 are pending. Claims 19, 20, 28, 29, 31-32 have been withdrawn. Claims 4, 15 and 30 has been canceled.

Support for the amendment to claim 1 is found in as-filed claim 30 and page 8, lines 3-5 of the as-filed specification.

The drawings stand objected to under 37 CFR 1.83(a), as the Examiner has concluded that the air vent cap must be shown or the feature canceled from the claim.

As claim 15 was the only claim reciting the air vent cap, and claim 15 has now been canceled, this objection should be withdrawn.

Claims 3 and 4 stand rejected under 35 USC 112, first paragraph, as failing to comply with the enablement requirement. The Examiner has taken the position that the delivery tube can not be flexible ( as required in claim 1) and non-compliant as in claim 3.

Claims 3 and 4 have been amended to eliminate the non-compliant feature.

Claim 9 stands rejected under 35 USC 112, second paragraph, as being indefinite. The Examiner has concluded that the term "cannula" lacks proper antecedent basis.

As claim 1 has been amended to include a cannula, there is now proper antecedent basis.

Claims 1,2,5-15,21-27 and 30 stand rejected under 35 USC 103 as being unpatentable over US Patent No. 5,800,390 ("Hayakawa") in view of US Patent No. 6,439,439 (Rickerd").

As amended claim 1 now requires a cannula attached to the distal end of the flexible tube. Hayakawa does not disclose a cannula attached to the distal end of the flexible tube. Rather, Hayakawa discloses a cannula attached to the proximal end of the flexible tube. See FIG. 3(c) of Hayakawa.

Rickerd has been cited solely for its advancement means and so fails to cure this deficiency in Hayakawa.

Moreover, since Hayakawa teaches that the distal end of its flexible tube is for placement within brain tissue, it would appear that the flexible nature of the tube would be critical to the proper functioning of the Hayakawa device. As such, the skilled artisan would be dissuaded from applying a relatively stiff cannula to the distal end of the Hayakawa flexible tube. Therefore, Hayakawa teaches away from the present invention.

For these reasons, the present rejection should be withdrawn.

Claims 16-18 stand rejected under 35 USC 103 as being unpatentable over US Patent No. 4,064,566 ("Fletcher") in view of US Patent No. 5,800,390 ("Hayakawa") and in further view of US Patent No. 6,439,439 (Rickerd").

Each of claims 16-18 depends from claim 1 and so now requires a cannula attached to the distal end of the flexible tube. As discussed above, the Hayakawa/Rickerd combination fails to disclose and teaches away from this requirement. Since Fletcher has been cited by the Examiner simply for its disclosure of a PMMA cement to adhere to bone to a substrate and fails to disclose a particular dispenser for the cement, Fletcher can not cure the deficiencies of the Hayakawa/Rickerd combination. Accordingly, the present rejection must be withdrawn.

Please provide any extensions of time which may be necessary and charge any fees which may be due to Deposit Account No. 10-0750/DEP5164/TMD, but do not include any payment of issue fees.

Respectfully submitted,

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Serial No. 10/607,826 Docket No. DEF5164 By: IMDApplication of: Voellmiche et al. Mailed: February 16, 2008Entitled: Vertebroplasty Device Having A Flexible PlungerTHE FOLLOWING HAS BEEN RECEIVED IN THE U.S. PATENT OFFICE ON THE  
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